

REMARKS

Claims 1-49 were pending prior to this amendment. Claims 1-49 have been rejected. Claims 1, 10, 13, 37, 47 and 48 have been amended. New claim 50 has been added. Reconsideration and allowance is respectfully requested.

Claim Objections

Claim 47 is objected because of informalities.

Claim 47 has been amended to correct a typographical error.

Claim Rejections – 35 U.S.C. § 112

Claims 1-12 are rejected under 35 U.S.C. §112, second paragraph.

Claims 1 and 10 have been amended to correct typographical errors.

Claim Rejections – 35 U.S.C. § 102

Claims 10, 13-15, 17-23, 37, 39, and 48 are rejected under 35 U.S.C. §102(e) as being anticipated by Kung et al. (U.S. Patent No. 6,775,267), hereafter Kung.

Claim 10 has been amended. Support for the amendment may be found in the present specification on page 4, lines 13-30. Kung fails to teach at least the element of dynamically varying the adaptation schemes including either varying which coder algorithm is used at the telephone endpoint, varying a packet payload size of the packets or varying what type of Forward Error Correction (FEC) is used in association with the packets.

Kung teaches a central station that receives user input and accordingly dynamically varies what network resources will be used to carry a VoIP call. See abstract, see Col. 7, lines 15-35, and also see figure 7c. The central station varies the priority of a call according to the user's requested Quality of Service (QoS) and bit rate requirements. See Col. 7, lines 27-30 and again on lines 30-35. Varying the priority of a call means selecting what network resources the call gets to use and selecting how the call is routed. See abstract, see Figure 7 showing service provider selections. Kung does not disclose varying which coder algorithm is used at the telephone endpoint, varying a packet payload size of the packets or varying what type of Forward Error Correction (FEC) is used in association with the packets.

Furthermore, there is no motivation in the prior art to modify Kung to vary which coder algorithm is used at the telephone endpoint, vary a packet payload size of the packets or vary what type of Forward Error Correction (FEC) is used in association with the packets. The Examiner acknowledged the lack of motivation during a November 16, 2005 phone call.

When Kung refers to varying the Quality of Service (QoS), Kung refers to varying what network resources handle the call to either reduce the cost of the call or to vary the probability of call packets reaching a destination. A user of the system in Kung could turn the dial shown in figure 7a to alter only what network path his call would take. In the Examiner's words (from the phone meeting), Kung discloses changing the quality of service, but does not suggest changing the quality of a call itself. Thus there is no suggestion to vary adaptation schemes such as what encoder algorithm is used, payload packet size or what type of Forward Error Correction (FEC) is used.

In contrast, claim 10 discloses varying which coder algorithm is used at the telephone endpoint, varying a packet payload size of the packets or varying what type of Forward Error Correction (FEC) is used in association with the packets. Varying these adaptation parameters allows a user to make better use of the network resources already allocated to him, rather than spending more money to get better network resources. Thus claim 10 should be allowed.

Claim 13 has been amended. Support for the amendment may be found in the present specification on page 4, lines 13-19. Claim 13 should be allowed for at least similar reasons as claim 10. Claims 14-15 and 17-23 are dependant and should also be allowed.

Claim 37 has been amended. Support for the amendment may be found in the present specification on page 4, lines 13-30. Claim 37 should be allowed for at least similar reasons as claim 10. Claim 39 is dependant and should also be allowed.

Claim 48 has been amended. Support for the amendment may be found in the present specification, figure 5. Kung fails to disclose at least the element of modifying adaptation parameters in response to the DTMF signals. Thus claim 48 should be allowed.

Claim Rejections – 35 U.S.C. § 103

Claims 1, 2, 4, 6-9, 12, 24, 25, 27, 29-33, 35, 36, 41-45, and 47 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kung.

With respect to claim 1, Kung fails to teach each and every element of claim 1. Kung fails to teach at least tracking adaptation schemes used at the telephone endpoint.

Kung allows a user to vary the priority of a call, the Quality of Service (QoS) provided to the user, and the bit rate provided to the user. The Examiner acknowledged that Kung fails to teach changing these three variables at a telephone endpoint. The Examiner alleges that one of ordinary skill in the art "could" modify Kung to enable the functionality of Kung to be performed at user endpoints.

Without addressing whether one of ordinary skill in the art "could" have made the proposed modification, the Examiner has not alleged a motivation that existed in the prior art at the time of filing the present application that would motivate one to make such a modification. See MPEP 2143. Thus a prima facie case of obviousness has not been established and the allegation by the Examiner uses hindsight to allege the change. *Id.*

Moreover, no such motivation existed because Kung teaches away from the modification. For example, the Examiner himself admits that the proposed modification to Kung would be "inefficient." See the October 11, 2005 Office Action, page 9, line 17. One of ordinary skill in the art, confronted with such inefficiency would certainly be motivated to avoid changing Kung to cause the inefficiency. Therefore, Kung teaches away from the proposed modification. Thus, claim 1 should be allowed. Claim 2 is dependant and should also be allowed. Although claim 2 was rejected, the explanation of the rejection was omitted. Claims 4, 6-9 and 12 are dependant and should also be allowed.

Claim 24 should be allowed for at least similar reasons as claim 1. Claims 25, 27, 29-33 and 35 are dependent and should also be allowed. Claim 36 should be allowed for at least similar reasons as claim 1. Claims 41-45 and 47 are dependant and should also be allowed.

Claims 3, 16, 26, and 38 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kung in view of Murphy et al. (U.S. Patent No. 6,282,192), hereafter Murphy.

Application 09/745,387 and Murphy were, at the time the invention of Application 09/745,387 was made, owned by Cisco Technology, Inc.

Murphy is not prior art for purposes of 35 U.S.C. §103. This is because Murphy at most resembles 35 U.S.C. §102(e) prior art (but is not necessarily even 102(e) prior art), and both Murphy and the claimed invention were, at the time the invention was made, assigned to Cisco (see rule 35 U.S.C. §103(c)). Thus, claims 3, 16, 26 and 38 should be allowed.

Claims 5, 11, and 28 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kung in view of Havens (U.S. Patent No. 6,735,175).

Claims 5, 11 and 28 are dependant and should be allowed for at least the same reason as their respective base claims.

Claims 34 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kung in view of Havens as applied to claim 11 above, and further in view of Rosenberg et al. (U.S. Patent No. 6,141,788), hereafter Rosenberg.

Claims 34 and 46 are dependant and should be allowed for at least the same reason as their respective base claims.

Claim 40 is rejected under 35 U.S.C. §103(a) as being unpatentable over Kung in view of Murphy and further in view of Havens.

Murphy is not prior art for purposes of 35 U.S.C. §103. Thus claim 40 should be allowed.

Claim 49 is rejected under 35 U.S.C. §103(a) as being unpatentable over Kung in view of Kato (U.S. Patent No. 5,844,918).

Claim 49 was discussed during a November 16, 2005 phone call. The Examiner acknowledged that there is no motivation to modify Kung with Kato to adjust packet payload length. Changing the QoS and the bit rate provided to a user is a different type of change than changing packet payload length. The former affects how much network bandwidth is provided to a caller, the later affects how much of that network bandwidth the call fills. In the Examiner's words (from the phone meeting), Kung discloses changing the quality of service, but does not suggest changing the quality of a call itself. Thus, claim 49 should be allowed.

New Claim

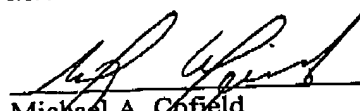
Claim 50 has been added. Support may be found in the present specification, page 3.

CONCLUSION

For the foregoing reasons, reconsideration and allowance of claims 1-50 of the application as amended is solicited. During a November 16, 2005 phone meeting, the Examiner indicated that he would call the undersigned before making any further rejections based on Kung. The offer is appreciated and the undersigned may be reached at (503) 276-4842.

Respectfully submitted,

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